

#### § 222.4

#### 34 CFR Ch. II (7–1–03 Edition)

(2) Certify to the Secretary that it will file, and file, a copy of the application referred to in paragraph (a) of this section with its SEA.

(b)(1) If any of the following events that give rise to eligibility for payment occur after the filing deadline in paragraph (a)(1) of this section, an LEA must file a complete and signed application within the time limits required by paragraph (b)(2) of this section:

(i) The United States Government initiates or reactivates a Federal activity, or acquires real property.

(ii) The United States Congress enacts new legislation.

(iii) A reorganization of school districts takes place.

(iv) Property, previously determined by the Secretary not to be Federal property, is determined in writing by the Secretary to be Federal property.

(2) Except as provided in paragraph (d) of this section, within 60 days after the applicable event occurs but not later than September 30 of the fiscal year for which the LEA seeks assistance under section 8002, or of the fiscal year preceding the fiscal year for which the LEA seeks assistance under section 8003, the LEA must—

(i) File an application, as permitted by paragraph (b)(1) of this section, with the Secretary; and

(ii) File a copy of that application with its SEA.

(c)(1) If the SEA wishes to notify the Secretary of any inconsistencies or other concerns with an LEA's application, the SEA must do so—

(i) For an application subject to the filing deadlines in paragraph (a)(1) of this section, on or before February 15 of the fiscal year for which the LEA seeks assistance under section 8002, or of the fiscal year preceding the fiscal year for which the LEA seeks assistance under section 8003; and

(ii) On or before fifteen days following the date by which an application subject to the filing deadlines in paragraph (b) of this section must be filed.

(2) The Secretary does not process for payment a timely filed application until any concerns timely raised by the SEA are resolved. If the Secretary does not receive comments or notification from the SEA by the applicable dead-

line set forth in paragraph (c)(1) of this section, the Secretary assumes that the data and statements in the application are, to the best of the SEA's knowledge, true, complete, and correct.

(d) If a filing date in this section falls on a Saturday, Sunday, or Federal holiday, the deadline for filing is the next succeeding business day.

(Approved by the Office of Management and Budget under control number 1810-0036)

(Authority: 20 U.S.C. 7705)

#### § 222.4 How does the Secretary determine when an application is timely filed?

(a) To be timely filed under § 222.3, an application must be received by the Secretary, or mailed, on or before the applicable filing date.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(Authority: 20 U.S.C. 7705)

NOTE TO PARAGRAPH (b)(1): The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

[62 FR 35412, July 1, 1997]

#### § 222.5 When may a local educational agency amend its application?

(a) An LEA may amend its application following any of the events described in § 222.3(b)(1) by submitting a written request to the Secretary and a copy to its SEA no later than the earlier of the following events:

(1) The 60th day following the applicable event.

(2) By the end of the Federal fiscal year—

(i) For which assistance is sought under section 8002; or

(ii) Preceding the fiscal year for which the LEA seeks assistance under section 8003.

(b) The LEA also may amend its application no later than the end of the Federal fiscal year for which assistance is sought under section 8002 or of the fiscal year preceding the fiscal year for which the LEA seeks assistance under section 8003—

(1) For an adjustment to its payment based on data obtained from a second membership count; or

(2) For an adjustment to its payment based on actual satisfactory data regarding eligible Federal properties or federally connected children if those data were not available at the time the LEA filed its application.

(Approved by the Office of Management and Budget under control number 1810-0036)

(Authority: 20 U.S.C. 7705)

#### **§ 222.6 Which applications does the Secretary accept?**

(a) The Secretary accepts or approves for payment any otherwise approvable application under section 8002 or 8003 that is timely filed with the Secretary in accordance with §§ 222.3, 222.4, and 222.5, as applicable.

(b)(1) Except as provided in paragraph (b)(2) of this section, the Secretary does not accept or approve for payment any application under section 8002 or 8003 that is not timely filed with the Secretary.

(2) The Secretary accepts and approves for payment any otherwise approvable application filed within 60 days of the applicable filing date established in § 222.3, but reduces the payment based on the application by 10 percent of the amount that would have been paid if the application had been filed by the applicable filing date established in that section.

(Authority: 20 U.S.C. 7705)

#### **§ 222.7 What information may a local educational agency submit after the application deadline?**

(a) *General.* Except as indicated in paragraph (b) of this section, the Secretary does not consider information submitted by an applicant after the

deadlines prescribed in this subpart for submission of applications and amendments to applications.

(b) *Information solicited by the Secretary.* The Secretary may solicit from an applicant at any time additional information to process an application.

(Authority: 20 U.S.C. 7702, 7703, 7705, 7706)

#### **§ 222.8 What action must an applicant take upon a change in its boundary, classification, control, governing authority, or identity?**

(a) Any applicant that is a party to an annexation, consolidation, deconsolidation, merger, or other similar action affecting its boundaries, classification, control, governing authority, or identity must provide the following information to the Secretary as soon as practicable:

(1) A description of the character and extent of the change.

(2) The effective date of the change.

(3) Full identification of all predecessor and successor LEAs.

(4) Full information regarding the disposition of the assets and liabilities of all predecessor LEAs.

(5) Identification of the governing body of all successor LEAs.

(6) The name and address of each authorized representative officially designated by the governing body of each successor LEA for purposes of the Act.

(b) If a payment is made under section 8002 or 8003 to an LEA that has ceased to be a legally constituted entity during the regular school term due to an action described in paragraph (a) of this section, the LEA may retain that payment if—

(1) An adjustment is made in the payment of a successor LEA to account for the payment to the predecessor LEA; or

(2)(i) The payment amount does not exceed the amount the predecessor LEA would have been eligible to receive if the change in boundaries or organization had not taken place; and

(ii) A successor LEA is not an eligible applicant.

(c) A predecessor LEA receiving any portion of a payment under section 8002 or 8003 that exceeds the amount allowed by paragraph (b)(2)(i) of this section must return the excessive portion to the Secretary, unless the Secretary